

JUL 6 - 2010

CERTIFIED MAIL
RETURN RECEIPT

Mrs. Lori Barger
Barger Contracting
Franklin, Indiana 46131

Re: Suspension of Barger Contracting

Dear Mrs. Barger:

This is to provide you with my written determination under 48 CFR 9.407-3(d), as the U.S. Department of the Interior (DOI) Debarring Official, to continue the suspension of Barger Contracting from Federal procurement and non-procurement activities pending completion of the ongoing criminal proceedings against James H. Barger.

I. Brief Procedural History.

By Notice dated November 20, 2009, DOI suspended James H. Barger as an individual and in the commercial capacity of "doing business as" Barger Contracting, a sole proprietorship, from Federal procurement and non-procurement program activities. The suspension is for a temporary period pending completion of legal proceedings.

Mr. Barger did not contest his suspension. An uncontested case determination on his matter was issued on January 29, 2010. His individual suspension remains in effect.

You, on behalf of Barger Contracting, submitted a contest letter dated December 28, 2009, in which you contend suspension of Barger is unnecessary. You state that Mr. Barger ceased being the owner and operator of Barger Contracting in July 2009, and that you now own and operate the business.

By email to you on January 12, 2010, David Sims, DOI Debarment Program Manager, established a schedule for proceeding on the Barger Contracting matter, setting a date of January 29, 2010 for submission any supplemental written contest information and a date for Barger Contracting to state whether it desired to make an oral presentation of matters in opposition as part of contesting the notice. Barger Contracting did not request to make an oral presentation of matters in opposition to the suspension.

By voice mail to Mr. Sims, on January 22, 2010, you requested a time extension indicating that you were in discussions with Mr. Stanley Stocker, the case representative in this matter, to explore the possibility of a negotiated resolution to the action. By email to Mr. Sims, dated

March 12, 2010, Mr. Stocker, the case representative, requested that issuance of a case decision be temporarily deferred to permit an effort to corroborate the ownership and control representations. By reply email on March 23, 2010, Mr. Sims advised you that preparation of a written case determination would be placed in abeyance for forty-five days, but that in the absence of further developments at the end of that time the matter would proceed to decision.

By email dated March 25, 2010, you informed Mr. Sims that Barger Contracting had received and was in the process of responding to a communication from the case representative. No further communication was forthcoming from Barger Contracting in the forty-five day period.

By email dated May 19, 2010, Mr. Sims informed you the time extension had expired and that Mr. Stocker would have until June 4, 2010 in which to provide final observations for the record, upon receipt of which the record would close for decision preparation. Mr. Stocker submitted final comments for the record, with a copy to you, on June 4th, at which time the record closed for issuance of a determination on the written record.

II. Discussion.

A suspending official may impose suspension where there exists adequate evidence to suspect, commission of an offense or other conduct which upon completion of investigation and ensuing legal proceedings would constitute cause for debarment under 48 C.F.R. 9.406-2. See 48 C.F.R. § 9.407-2(a).

On August 13, 2009, the Hancock County Superior Court No. 1, for Hancock County, Indiana, returned a criminal Information against James H. Barger (Mr. Barger) charging him with seven counts of bribery of a public official with the intent to hire, award, or direct business to James H. Barger and Barger Contracting as the name under which he conducted business, in violation of Indiana Code 35-44-1-1(a)(1); and seven counts of theft in violation of Indiana Code 35-43-4-2(A). The Information alleges that between August 15, 2008 and September 3, 2008, Mr. Barger offered, or provided, bribes to an Indiana public official in order to obtain a contract to perform work on the exterior of the Hancock County Courthouse, in Hancock, Indiana. The Information alleges that Mr. Barger paid the bribes in connection with over \$250,000 in invoices submitted to Hancock County.

Bribery and theft are felony offenses which adversely reflect upon business honesty and integrity. Bribery, in particular, strikes at the heart of the integrity of the public contract award process. The fact of the criminal Information establishes, as a matter of regulation, the existence of cause for suspension of Barger Contracting as Mr. Barger's "dba", as well as Mr. Barger as an individual under 48 C.F.R. § 9.407-2(a) (1), (3), and/or (c).

2.

Barger Contracting is not named as a Defendant in the criminal case. However, the Information specifically alleges, in part, that in 2008 Mr. Barger engaged in bribery to hire, award, or direct business to, prepare fraudulent bids, quotes, and claims for, and process fraudulent claims on

behalf of Mr. Barger and/or Barger Contracting. I take note that for suspension and debarment purposes his alleged misconduct is properly imputed to Barger Contracting under 48 C.F.R. § 9.406-5(a), via § 9.407-5(a).

In your December 28, 2009, letter on behalf of Barger you stated that: James H. Barger no longer has an ownership interest in Barger Contracting; and, that James H. Barger "no longer has any dealings or control in any capacity over the day-to-day operations of Barger Contracting. In support of these statements, you enclosed a copy of a Central Contractor Registration (CCR) print-out dated December 23, 2009, which lists you "Lorri D. Barger" as the Sole Proprietor Point of Contact and a copy of the ORCA registration. You also provided with your submission a signed and notarized statement from Mr. Barger that reads:

"I, James H. Barger, hereby affirm that the ownership of Barger Contracting was transferred to Lorri D. Barger on July 30, 2009. As such, all control of Barger Contracting is now solely maintained by Lorri D. Barger. I, James H. Barger, relinquished all interest in Barger Contracting at the time of the ownership transfer."

The representation in your letter that Mr. Barger's involvement with Barger Contracting terminated completely on July 30, 2009, is inconsistent with other information in the record. The Dun & Bradstreet Report attached to the Action Referral Memorandum and dated August 7, 2009, under the heading "Management", lists you as Owner, and Mr. Barger as the Principal of Barger Contracting. The CCR Registration print out dated December 23, 2009, which you provided with your December 28, 2009 contest letter while listing you as sole proprietorship owner, also lists the email address associated with Barger Contracting electronic funds bank transfers as jim.barger@bargercontracting.com.

Commencing in January 2010, Mr. Stocker sought by telephone, email, and correspondence, to elicit from Barger Contracting corroboration for the representations of exclusion of Mr. Barger from operation and control; information bearing directly upon the question of whether or not to continue the suspension of Barger Contracting.

By telephone in January, 2010 and then by email on February 19, 2010, Mr. Stocker requested that Barger provide documentation to verify that Mr. Barger no longer works for Barger Contracting, has no ownership interest in the company, and has no control over the company operations. Mr. Stocker's June 4th memorandum indicates that Barger Contracting made no response to these requests.

On February 22, 2010, Mr. Stocker learned from Jeffrey Caravelli, Supervisory Contract Specialist, Western Region Branch of Acquisition and Grants, U.S. Geological Survey (USGS) that in September 2009 Mr. Barger, as "General Manager", signed a proposal submitted by

Barger Contracting to USGS. A copy of the Barger Contracting Proposal signed by Mr. Barger is included as an attachment to Mr. Stocker's June 4, 2010 memorandum. The Barger proposal

bears a date two months later than the July date on which you represented Mr. Barger no longer had any ownership of, or operating responsibilities on behalf of, Barger Contracting.

On February 24, 2010, Mr. Stocker by e-mail again requested that Barger Contracting identify the date on which Mr. Barger ceased having dealings with, or control over, the day to day operations of Barger Contracting, and inquired whether Barger Contracting had papers filed with the Indiana corporation office or other state office confirming the change in ownership. When Barger Contracting did not respond, Mr. Stocker sent correspondence to Barger Contracting by certified mail dated March 18, 2010, requesting a written reply within 10 days of receipt of the letter. The letter also asked whether Mr. Barger continues to receive any salary or benefits from Barger Contracting, and whether Barger Contracting continues to maintain its business registration in the State of Indiana or in Johnson County. The return receipt card shows that the letter was received and signed for by "Jim Barger" on March 22, 2010. Once again, Barger Contracting did not reply to the information request.

The August 8, 2009 Dun & Bradstreet Report identifying Mr. Barger as a Principal of Barger Contracting, the proposal submitted by Mr. Barger on September 30, 2009, in which he represents himself as "General Manager", the November 2009 CCR Registration listing of an email address for "jim.barger@bargercontracting" in connection with Barger Contracting banking, and Mr. Barger's March 2010 signing for certified mail correspondence addressed to Barger Contracting, raises the serious question whether Mr. Barger has truly relinquished operational control over Barger Contracting as represented. Despite ample opportunity, Barger Contracting has not responded to provide information to clarify Mr. Barger's actual current relationship to the business. A reasonable conclusion is that Mr. Barger has a continuing operational presence. Absent corroborated information to the contrary from Barger Contracting, continuation of Barger Contracting's suspension to protect Government procurement and non-procurement program interests is warranted.

The Suspending Official also considers whether the immediate action of suspension is necessary to protect the public interest. See 48 C.F.R. § 9.407-1(b) (1). At the time of the suspension notice issuance, Barger Contracting had submitted a proposal in response to USGS solicitation number 09WRSS0022 under the American Recovery and Reinvestment Act of 2009 (ARRA). The solicitation concerned the demolition/removal of approximately 1,250 discontinued water monitoring stations across the U.S. If awarded to Barger Contracting, the contract would have involved approximately \$920,000 in ARRA funds. Presented with information that a bidder on an impending award was criminally charged with bribery and theft in connection with public contracting, very serious offenses posing a direct threat to the integrity of the procurement award process and public confidence in such programs, the immediate action of suspension was appropriate. Barger Contracting does not provide information in this suspension proceeding to persuasively alter that assessment.

Based on the information contained in this record cause for suspension continues to exist. Mr. Barger is charged with offenses which strike at the heart of the integrity of the public contract award process. Mr. Barger allegedly engaged in the misconduct doing business as Barger Contracting, his sole proprietorship. Mr. Barger remains suspended pending the outcome of his criminal case. The record does not persuasively establish that Mr. Barger is presently effectively isolated from control and operation of the business. Indeed, Barger Contracting's refusal to respond to requests for information which might obviate the need for suspension continuation leads, by reasonable inference, to a conclusion that Mr. Barger in fact remains an active presence at Barger Contracting.

Considering the general construction contracting nature of Barger Contracting's business and the recent efforts to participate in federally funded work, it is a reasonable inference that absent continuation of the suspension, Barger Contracting would seek to participate in work funded by Federal procurement or non-procurement award prior to completion of the ongoing criminal proceedings. Accordingly, continuation of suspension of Barger Contracting under 48 C.F.R. § 9.407-1 is warranted.

Sincerely,

(signed) Debra E. Sonderman

Debra E. Sonderman, Director
Office of Acquisition and Property Management

cc: David M. Sims, PAM
Jim Weiner, SOL
Ed Woo, OIG
James Smith, OIG/AIU
Stanley Stocker, OIG/AIU
Official Case File